IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

J U D G M E N T

S.B.CIVIL MISC. APPEAL NO.130/1996
(Variam Singh Vs. Santokh Singh and ors.)

DATE OF JUDGMENT : 13-04-2007

P R E S E N T

HON'BLE MR.JUSTICE R.S.CHAUHAN

Mr.Intzar Ali, for the appellant.

BY THE COURT:

This appeal arises out of the order dated 13.10.1995 passed by the Motor Accident Claim Tribunal, Behrod (Alwar), whereby the application filed by the appellant for restoring the claim petition has been dismissed.

2. The brief facts of the case are that the appellant -claimant had filed a claim petition before the learned Tribunal on the ground that on 29.7.1992, he had met with an accident with truck No.DIG-5704 which was being driven by Santokh Singh, respondent no.1 and the truck was owned by Dharampal, respondent no.2 before this court. Consequently, his left leg had to be amputated below the knee. He further claimed that at the time of accident, his age was 40 years and he was working as Cleaner on the truck. Therefore, he

had claimed a compensation of Rs.13,00,000/-. According to the appellant, although notices of the said claim petition were served on respondent no.1, the driver and respondent no.3, the Insurance Company, notice was yet to be served on the owner of the truck. For this purpose, case was listed before the Tribunal on 14.7.94. However on 14.7.94, the counsel for the appellant, Sh. Rama Kant Sharma, could not appear before the Tribunal as he was suffering from heart problem. He was also unable to inform the appellant. In the absence of the appellant and his counsel, the claim petition was dismissed by the Tribunal. On 4.8.1994, the counsel for the appellant filed a restoration application which was listed on 23.5.1995. But unfortunately even on that date, the counsel had to leave for Gaziabad on urgent personal work. Therefore, the said restoration application was dismissed. Still to pursue this claim petition, the appellant filed a second restoration application before the learned Tribunal. However, vide order dated 13.10.1995, the learned Tribunal dismissed the second restoration application. Hence this appeal before this court.

3. Mr. Intzar Ali, has argued that because of the fault of the counsel for the appellant, the litigant cannot be made to suffer as it is he who has already lost his left let and has become physically handicapped, for the rest of his life. Under the law, he is entitled to claim compensation and the compensation cannot be denied for the

fault of counsel who had not appeared before the Tribunal.

4. Although the name of the counsel for the respondent no.2 is shown in the cause list, but the learned counsel is not present in this court. Hence, we do not have any assistance from him.

5. Considering the fact that the appellant is physically handicapped because of the alleged accident, he is certainly entitled to claim compensation under the law. The learned Tribunal should not have taken a pedantic or hypertechnical view of the situation. It is, indeed, a settled position of law that the litigant cannot be made to suffer because of the fault of the counsel. Thus, we see no reason as to why the restoration application should not have been allowed by the learned Tribunal. Therefore, the order dated 13.10.1995 is quashed and set aside and the learned Tribunal is directed to restore the claim petition to its original number and to expeditiously decide the case. The appellant is directed to appear before the learned Tribunal on May 2nd, 2007.

R.S.CHAUHAN,J.

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